

Responsiveness Summary

Proposed Hazardous Waste Management Construction Permit

Environmental Disposal Systems, Inc. Citrin Drive Facility; MIR 000 016 055

Introduction

On December 8, 2000, the Department of Environmental Quality (DEQ) proposed to issue a hazardous waste management construction permit to Environmental Disposal Systems, Inc. (EDS). The permit would allow EDS to construct a hazardous waste storage and treatment facility at 28470 Citrin Drive in Romulus, Michigan. The permit is required under Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), and its administrative rules, MAC R 299.9101 *et seq.*

The DEQ made the draft permit, Fact Sheet, and the entire administrative record available for public review, and offered interested persons an opportunity to comment on the proposed decision during a public comment period from December 15, 2000 to February 1, 2001. The DEQ also conducted a public hearing regarding the proposed decision on January 17, 2001.

The comment period is now closed. The DEQ did not reopen or extend the comment period, and did not reconvene the Site Review Board (SRB) to consider any of the issues raised during the comment period.

This Responsiveness Summary contains the DEQ's response to all relevant comments received at the public hearing and during the public comment period. The comments have been categorized in a manner similar to the categories of issues that were considered by the SRB. The comments are presented in *Italics*, and the DEQ's responses are presented in regular type following each comment. Additionally, the facility-specific conditions in the permit and any conditions from the draft permit that were revised based on public comment are listed separately at the end of this Responsiveness Summary.



I. APPLICANT'S QUALIFICATIONS

1. *The DEQ failed to adequately address the SRB's concern over EDS's lack of experience in operating a commercial hazardous waste injection well facility.*

In deciding whether to issue the construction permit, the DEQ is concerned with the qualifications and training plans for the staff who will operate the storage and treatment facility. The staff qualifications (engineers, chemists, certified treatment plan operators, etc.) and training plans (hazardous materials, contingency plan, etc.) contained in Section 2.110 of the permit application are appropriate for the operation of the storage and treatment facility. Further, EDS is required under Condition III.G of the permit to hire and maintain qualified staff to operate the storage and treatment facilities. Many of the staff positions are probably not filled at this point because the facility is not constructed or operational. EDS will be required to demonstrate that qualified staff will operate the storage and treatment facility at the time they apply for an operating license, and throughout the operating life of the facility.

The injection wells are separate from the storage and treatment facility. Whether EDS has a qualified injection well operator now, or whether they will have to hire one later, is not a consideration for the construction permit.

II. CAPACITY NEEDS

1. *The DEQ ignored the extensive and convincing study performed by the Tellus Institute which showed that the facility is not needed, and the DEQ did not identify a need for the facility. What information did the DEQ rely upon to state that the projections in the reports and testimony received during the SRB process are inaccurate?*

In general, the referenced report provides a fairly accurate depiction of the trends in hazardous waste generation in the state. Because the report did not address waste volumes that are not reported on manifests, and because it did not address transshipped wastes (wastes that are manifested from the generator to a storage site, and then manifested again to a treatment or disposal site), the actual quantities of waste generated in Michigan differ substantially from what is shown in the report. Still, a decreasing trend in generation is obvious from the data, and the DEQ expects that trend to continue. Note, however, that the trend can be unexpectedly offset by regulatory changes that require previously unregulated wastes to be managed at licensed hazardous waste management facilities, as occurred in 1990 when the federal toxicity characteristic and wood preserving waste rules were promulgated, in 1992 when the coke by-products and chlorinated toluene production waste rules were promulgated, and in 1994 when the wood surface protection waste rules were promulgated.



The problem with the report is not so much with the projections regarding waste generation; it is with the projections regarding available commercial capacity to manage the wastes that are still generated. The report uses capacity data from 1993. Since that time, several facilities have closed voluntarily or involuntarily. In addition, in 1999, Michigan took an enforcement action that could have resulted in the permanent closure of a major commercial facility. Given recent consolidations in the industry, the DEQ expects one or two more commercial facilities to cease operations within the next year. None of this was predicted in 1993, and the result is a substantial decrease in available capacity in the state. Further, recent changes in regulations regarding central wastewater treatment plants – facilities that currently manage some of the same wastes that EDS would manage – are expected to prompt some of these facilities to discontinue accepting certain waste streams. While the DEQ expects to still have adequate capacity to manage the types of wastes that could be managed at EDS, it is impossible to accurately predict what the available capacity will be just a few years from now.

2. *The DEQ's rejection of the SRB's determination that there is no need for the facility violates the need criteria established under Section 11110 of Act 451 and the rulemaking requirements of the Administrative Procedures Act.*

Section 11110 of Act 451 does not establish a “need criteria” for permitting. The DEQ is required under Section 11110 of Act 451 to assess the overall capacity needs in the state for the purpose of identifying capacity shortfalls and the means to eliminate them (see Section 11110(4)), not to keep new facilities from being developed. Neither Part 111 of Act 451 nor the updated Hazardous Waste Management Plan contain provisions for the DEQ to deny a permit for a facility that is not necessarily “needed” in order to address some current state or regional market demand.

Further, the DEQ is not violating any rulemaking requirements under the Administrative Procedures Act. By allowing market forces to work, the DEQ is simply following one of the fundamental policies reiterated in the 1991 Update to Michigan's Hazardous Waste Management Plan: “Michigan should rely upon private enterprise, rather than state government, to develop necessary hazardous waste management facilities...” Private enterprise assesses the market (locations of generators, competition, economic trends, available technology, etc.) and takes the initiative to develop new facilities.

The question of capacity need should not even arise in the context of the EDS permit. The deep wells have already been permitted by the U.S. Environmental Protection Agency (EPA) and the DEQ's Geological Survey Division under other federal and state statutes. Those permitting processes already addressed questions regarding the “need” for the wells. EDS is now



required under Part 111 of Act 451 to obtain a construction permit for the storage and treatment facilities that will be associated with the wells.

3. *The DEQ's determination that there is a need for the facility is arbitrary, capricious and unsupported by competent, material, and substantial evidence in the record.*

The DEQ has not determined that the facility is needed. Further, as explained in the previous two comments on this subject, the record does not support a determination that the facility is not needed, and nothing in Part 111 of Act 451 suggests that the only facilities that will be permitted are those that the DEQ determines are "needed."

4. *The DEQ's market-based formulation of need is inconsistent with its obligation to protect public health, safety, welfare and the environment from unreasonable risks associated with hazardous waste management activities.*

The DEQ is fulfilling its role of protecting the public health, safety, and welfare and the environment by ensuring that a facility meets the stringent technical requirements under Part 111 of Act 451. Those technical requirements were established to address the risks associated with hazardous waste management activities. As explained in an earlier response, the "market-based formulation of need" is a fundamental element of Michigan's hazardous waste management program.

5. *Siting this facility encourages imports from other states and Canada.*

The EDS facility may attract hazardous waste shipments from throughout Michigan, other states, and Canada. The actual percentage of wastes that might be imported from other states and Canada is indeterminable. Whether it will actually "encourage" imports depends on a variety of factors, including usage of the facility by Michigan generators, how competitive the EDS facility will be with other commercial facilities in the region, transportation costs, etc.

III. COMPLIANCE AND ENFORCEMENT

1. *There is currently no permanent revenue source for the DEQ to inspect, license, or regulate hazardous waste transporters, and the hazardous waste program is operating off of a surplus of fee revenue from a revenue source that was repealed in 1998. This raises concerns over the ability of the DEQ to run an adequate program, making EDS an even greater risk.*

Prior to 1998, revenue from the hazardous and liquid industrial waste licenses funded both the hauler program and the state portion of the hazardous waste program (the state program is funded primarily through a federal grant). Changes enacted in 1998 dramatically reduced the revenue from the transporter licenses, and that reduced revenue now supports only the hauler



program. The hazardous waste program is currently funded from the remaining surplus revenue of the pre-1998 transporter licensing program. That surplus will not last indefinitely. As directed by the legislature when it changed the transporter licensing program in 1998, the DEQ is actively pursuing replacement fees to fund the hazardous waste program.

2. *Conditions III.L.6 and 7 of the permit should be revised to require that the noncompliance reports also be submitted to the city of Romulus, city of Taylor, and to Wayne County.*

The DEQ agrees with the timely reporting of matters that endanger the public or environment to local authorities, and has therefore revised Condition III.L.6 to require submission of the report regarding violations that endanger the public or the environment to the cities and the county. Condition III.L.7 has not been revised. The report required under Condition III.L.7 regards only those violations that do not endanger the public or the environment, and the DEQ does see a basis to require EDS to report them to local authorities.

IV. CONSTRUCTION PERMIT

1. *On the cover page of the permit, it is not clear that the only authorized activities are designated with an "X" in the adjacent check box.*

Only those activities that have an "X" in the adjacent check box are authorized.

2. *What treatments are authorized in the permit?*

Condition V.C of the permit authorizes physical separation of oils from wastewater, primary solids settling, flocculation, clarification, pH adjustment, filtration, and sludge thickening and dewatering.

3. *The permit fails to state the frequency that roll-off boxes must be removed from the site. They should be removed from the site within two hours.*

As stated in Condition IV.E.6 of the permit, roll-off boxes that are removed from the sludge dryer cannot be stored for any length of time. They must be removed and loaded directly onto a licensed vehicle for transportation to a licensed disposal facility.

4. *The permit should not be issued because Wendell Flynn owns the site and the IRS has placed liens on the property.*

EDS obtained clear title to the Citrin Drive property on May 12, 2000.

5. *Conditions I.C.2, I.C.3, I.C.4, and I.C.5(f) of the permit should be moved to Condition I.F because they pertain to construction issues and are not*



requirements under local ordinances.

Conditions I.C.2 (soil erosion and sedimentation control) and I.C.3 (dust control) were not moved to Condition I.F because they fall under local (city or county) ordinance requirements. Draft permit Conditions I.C.4 (looped water supply) and I.C.5(f) (alternate emergency access/egress road) were moved to Conditions I.F.3 and I.F.4, respectively.

6. *Conditions I.B, I.C.6, and I.C.7 of the permit should each refer to the preemption provisions under Sections 11121, 11125, and 11134.*

The referenced conditions were revised to reference all of the preemption provisions: Section 11121 which preempts local ordinances that would prohibit construction of the facility; Section 11125 which preempts local ordinances that would prohibit operation of the facility; and Section 11134 which preempts local ordinances that would prohibit transportation of wastes to the facility.

7. *Condition I.B of the permit should be revised by adding the phrase “and this permit” at the end of the third sentence.*

The phrase was not added because the construction permit does not specifically identify any local permits or approvals that are not necessary. As explained in responses under Section XXIII. Zoning and Local Ordinances, the DEQ's intent with the construction permit is to integrate specific local ordinances, permits and other requirements; not to authorize EDS to violate any of them. The permit does not obviate the necessity of obtaining local permits or approvals, except those that would prohibit the construction, operation, or transportation of waste to the facility, consistent with Sections 11121, 11125, and 11134 of Act 451.

V. DEQ REVIEW

1. *How can the DEQ issue the permit when so many citizens are opposed to the facility?*

Part 111 of Act 451 does not include citizen opposition, in and of itself, as one of the criteria under which the DEQ is authorized to deny a permit. The decision must be based on a determination of the facility's compliance with the applicable laws and regulations and its impact on human health and the environment.

2. *The DEQ made its decision to issue the permit before EDS even applied for it.*

The DEQ did not prejudge the proposal, and has made it clear since the application was submitted that if the proposal met all of the technical



requirements under the law, if there were no adverse listings in the disclosure statement, and if there were no adverse impacts on the local community which could not be mitigated, the permit would be issued. These are the criteria established under Part 111 of Act 451 and the DEQ has always been determined to comply with them.

Some comments have been made that, before the SRB process even began, DEQ officials said that the permits would be issued. Those commenters may be referring to statements that were purportedly made regarding the Part 625 of Act 451 permits for the wells. The permits for the wells were issued before the SRB process began, and, appropriately, were unaffected by the SRB process.

3. *The DEQ failed to provide meaningful opportunity for public review of and comment on its proposed permitting decision. For example, the Fact Sheet refers to reports but does not cite or identify them in a way that would allow easy access.*

The DEQ notified the public of its draft decision through mailings, newspaper notices, the DEQ Calendar, local radio, and an Internet site. These notices went beyond the minimum requirements for public notices of draft permit decisions.

The public has had considerable opportunity to comment on the EDS project for the past four years, either in writing or at any of approximately one dozen public meetings held in Romulus.

The DEQ has included in every notice a statement that the entire administrative record for the project is available for public review at the Waste Management Division Office in Lansing. Any of the “reports” referenced in the fact sheet or other notices are part of that record, and have been available since they were presented to the SRB during its process from October 1999 through March 2000. The DEQ has not relied upon any reports other than those that were part of the record of the SRB process.

4. *The DEQ failed to give meaningful consideration to the SRB’s recommendations and public’s comments.*

The DEQ evaluated each of the SRB’s reasons for recommending denial of permit and provided a detailed evaluation of them in the Fact Sheet. That evaluation included consideration of the public testimony submitted during the SRB process. As explained in this document and the Fact Sheet, the SRB’s recommendations and the public’s comments were the basis for the DEQ to add special conditions to the construction permit (looped water supply, emergency access, community mitigation, traffic limitations, etc.).



5. *The DEQ granted EDS an illegal suspension of review of the permit application.*

The DEQ did not grant any suspensions during the review of the permit application. The application was submitted in May 1999 and it was processed ahead of the review deadlines under Part 111 of Act 451.

6. *During its presentation on January 17, 2001, the DEQ made reference to numerous accepted hazardous waste management practices (solidification, incineration, etc.), and then described the EDS facility. Is EDS proposing all of these methods?*

That part of the presentation was intended only to show that treatment and deep well injection are among several accepted disposal methods; not that EDS would be authorized to do anything other than store and treat waste prior to deep well injection.

7. *The DEQ is prohibited from issuing construction permits for new facilities because it failed to prepare an updated hazardous waste management plan and associate rules in accordance with Sections 11110 through 11115 of Act 451.*

The DEQ (then part of the Department of Natural Resources) did prepare and adopt an updated hazardous waste management plan as required under Sections 11110 through 11112. The updated plan was the product of the Hazardous Waste Policy Committee and its statewide public participation process. The Natural Resources Commission in December 1991 adopted the 1991 Update to the Hazardous Waste Management Plan for Michigan. The proposals regarding hazardous waste management facilities in the updated plan require legislation before the DEQ can propose administrative rule changes and implement them. The DEQ has supported several proposed bills in the Legislature that are consistent with the updated plan.

8. *The DEQ's proposal to issue the permit despite the SRB's recommendation to deny it is tainted by the DEQ's bias and lack of objectivity, as displayed by the DEQ during the SRB process. During the SRB process, the DEQ presented witnesses on behalf of or in support of issues advocated by EDS, attempted to limit the SRB's review and deliberation of certain issues, and provided summary sheets containing brief, dismissive statements on community-raised issues.*

The administrative record developed during the SRB process simply does not support the allegation that the DEQ lacked objectivity. The SRB decided its own timeline, the issues that it would consider, the agenda for each meeting, and who would be called to provide testimony. The written and oral testimony provided to the SRB by the DEQ was done at the request of the SRB, and the DEQ's summary sheets were provided only to help the SRB keep track of the



issues and testimony; not as a replacement for the meeting minutes and evidence presented during the process. The SRB did not complain about or object to any of the written summaries provided by the DEQ. Also, as explained in later responses regarding the SRB process, the DEQ did everything it could to keep the SRB on track. At one point in the SRB process, the DEQ even had to persuade the SRB to not cut off testimony from the public and EDS, and instead to hear all the testimony that the SRB had determined was important and to deliberate on the issues before voting on a recommendation.

9. *The DEQ should be estopped from issuing the construction permit because EDS had not obtained all necessary environmental permits (wetland permit, local permits and approvals, permit for relocation of drain along emergency access road, etc.) prior to the application being referred to the SRB, and because the DEQ failed to immediately replace a SRB member who resigned after the first meeting.*

The lack of having obtained all other permits is not a basis to stop the DEQ from issuing the construction permit. The construction permit application was not referred to the SRB until EDS had obtained all state-required environmental permits that were known to be necessary at that time, and that is what Sections 11119(1)(c) and 11120(1) of Act 451 require. The law does not require an applicant to obtain other permits under local ordinances or those that are not yet determined to be necessary (e.g., permits necessary to comply with mitigating conditions developed by the SRB), and it does not require that a SRB process terminate if it is subsequently determined that another permit is necessary. As explained in a later response regarding environmental permits, the need for a wetland permit was discovered after the SRB convened, and that permit was addressed during the SRB process.

The fact that one SRB member decided not to attend the SRB hearings also is not a basis to stop the DEQ from issuing the construction permit. The member who represented Michigan municipalities did not attend most of the hearings. He never formally resigned from the SRB. The DEQ is not empowered to make a member attend and participate in the hearings, nor is it empowered to remove that member and replace him.

VI. DISCLOSURE STATEMENT

1. *The integrity of EDS is a legitimate issue because it was clearly documented that certain co-founders of EDS have been found guilty of serious environmental crimes by the state, EDS played a corporate shell game to avoid or resolve legal problems with its permits, and several former Department of Natural Resources (DNR) or DEQ employees who were involved with the EDS permits are now working for the company.*

It was clearly documented during the SRB process that none of the persons



who are subject to the disclosure requirements under Part 111 of Act 451 have been found guilty of any serious environmental crimes by any state, federal, Canadian, or provincial agency.

The DEQ cannot deny a permit simply because former state employees are now working for the company. The DEQ cannot control where former employees work. Still, it is our understanding that EDS currently does not employ any former DEQ or DNR employees. Some former DEQ or DNR employees apparently have provided professional consulting services to EDS and numerous other clients, a practice that is totally acceptable. In addition, nothing in the administrative record for the project suggests that EDS obtained its permits due to any extraordinary efforts on the part of any former employees, either before or after they left the agency.

VII. ENVIRONMENTAL IMPACT

1. *Approval of the proposal is inconsistent with the Michigan Environmental Protection Act, Part 17 of Act 451, which states that the DEQ should not authorize conduct that is likely to pollute the air, water, or other natural resources if there is a feasible or prudent alternative.*

Permitting a facility that complies with other parts (111, 625, etc.) of Act 451 is consistent with Part 17 of Act 451. By complying with these other parts of Act 451, the facility will not result in pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources.

2. *The additional trucks carrying waste to the facility put Michigan's environment at greater risk.*

Hazardous waste is already transported safely across Michigan's roads and railways. The EDS facility will probably take some of the waste that is already generated and transported throughout Michigan. The volume of trucks may increase due to additional hazardous waste shipments from outside of Michigan, although the number of additional trucks carrying waste to the facility is indeterminable.

VIII. ENVIRONMENTAL JUSTICE

1. *The DEQ does not have any established guidelines to identify and address environmental justice.*

A number of states have attempted to address the environmental justice issue by designating environmental justice coordinators or ombudsmen, whose role is to interface with different program staff and "highlight" the issue. The DEQ



believes that the more effective approach to addressing environmental justice in the context of environmental permitting is to ensure that the permitting processes incorporate consideration of the issue. This is a more difficult achievement, as it requires review of existing processes that may vary considerably, depending on the language of the enabling statute and the technical tools and methodologies available to staff to perform certain analyses. The DEQ is in the process of reviewing, program-by-program, its permitting processes. The goal is to incorporate as many of the recommendations of the Environmental Justice Workgroup as we believe we have the tools and resources to accomplish. Modifications may include some level of additional effort, under certain circumstances, when there is an indication that the proposed permit is not protective of human health and the environment. Any modification to a process that DEQ implements should meet the following criteria: be based on common sense and sound science; be consistent within and between states; and be objective and replicable.

2. *The DEQ should undertake a complete environmental justice analysis prior to issuing the permit.*

This statement presumes that DEQ has the tools by which to make such an analysis. The EPA has published four draft guidance documents in the last three years that attempt to describe an appropriate review process, and yet leave DEQ and other state environmental permitting agencies with numerous questions. Title VI of the Civil Rights Act places the federal government in the role of gauging whether the actions of states or other federal funding recipients discriminate against a protected class. Therefore, looking to the federal government for guidance on this issue, we did not perform an environmental justice analysis at this site because a review by the EPA indicated that this did not qualify as an environmental justice case, and, based on the EPA's draft guidance, the demographics of the area do not suggest that the EPA's conclusion was inaccurate.

3. *The DEQ cannot rely on the environmental justice analysis done by the EPA because it was conducted for a different permitting decision. For example, the EPA's analysis did not consider the consequences from discharges to surface waters because such discharges were regulated by the DEQ. Also, the EPA's analysis was flawed because it presumed that the facility would always operate in compliance with its permit. The DEQ should expand the analysis to cover potential impacts of the facilities covered by the construction permit, and the potential impacts of violating conditions in that permit.*

Both the federal and DEQ permitting programs start with the presumption that a facility will operate in compliance with its permit. Margins of safety are built into the technical requirements. However, the idea of denying a permit or incorporating more stringent conditions based on the possibility of noncompliance opens the door to arbitrary governmental decisions. A more



prudent approach to addressing the possibility of violations would be to modify the statute so that a permit might be denied under specific circumstances, or the burden would be shifted to the applicant to demonstrate that it has safeguards in place above and beyond minimum requirements.

4. *The EPA's environmental justice analysis was also flawed because its definition of an "environmental justice community" is not appropriate for Michigan. The EPA defines an environmental justice community as one in which the percentage of minority or low-income residents is double the statewide average. In Michigan, where the minority population is heavily concentrated in a single city and county, this standard will provide a skewed image of potential environmental justice concerns.*

This type of demographic pattern is certainly not unique to Michigan and is something that deserves better guidance from the EPA on how to interpret Title VI of the Civil Rights Act.

5. *Given the DEQ's mission statement which provides for a "strong and sustainable economy," the DEQ must consider the impact of its permitting decision on the strength and sustainability of and property values in the surrounding communities in its environmental justice analysis.*

The DEQ is charged with protecting human health and the environment. The presence of disposal facilities such as EDS clearly impact their surrounding communities in ways beyond DEQ's control. If Romulus were as over-burdened by undesirable industrial or commercial development as some commenters have suggested, then it would be difficult for DEQ to gauge the impact of this specific facility on property values.

6. *The DEQ has misinterpreted the Select Steel decision in an effort to justify its failure to conduct an environmental justice analysis in this case. The Select Steel case accounted for cumulative impacts of air emissions in the affected community. The DEQ's contention that it can safeguard against disproportionate impacts by simply enforcing its technical hazardous waste management regulations is not justified; the technical regulations do not address cumulative impacts in the affected community. A cumulative impact analysis should be part of the DEQ environmental justice analysis for the facility.*

The construction permit does not authorize any emissions; thus the mechanics of performing an assessment of cumulative impact are unclear and, to our knowledge, undefined.

IX. ENVIRONMENTAL PERMITS



1. *The construction of the alternate access road along the railroad appears to require the relocation of a drainage ditch, and that requires environmental permits that EDS had not yet obtained.*

EDS is required under Condition III.H.5 of the permit to install and maintain an alternate emergency access/egress road, either along the railroad to Inkster Road or across the railroad to Wick Road. Neither route contains county drains. Both routes apparently contain some wetlands. The route along the railroad may require a wetland permit. The route to Wick Road would be covered under the general permit provisions of Part 303, Wetlands Protection, of Act 451. While EDS has all environmental permits necessary for construction of the road to Wick Road, EDS may still pursue either route.

2. *The DEQ should not have referred the application to the SRB because EDS had not yet obtained a wetland permit, and when the DEQ ultimately agreed during the SRB process that a wetland permit was required, the SRB process should have been stopped. Instead, the SRB process continued and the DEQ bent over backwards to assist EDS and played semantics with the permit process in an effort to ensure that EDS obtain a permit that never should have been issued.*

When EDS submitted its first application in January 1997, the area of the site that would be impacted by the construction of the facility did not appear to contain any wetlands. A professional wetlands consultant had determined that wetlands would not be impacted, and it was confirmed that the site was not included in the National Wetlands Inventory. The application was subsequently withdrawn and then resubmitted in May 1999. During that time, vegetation indicative of a wetland area began to grow abundantly. Shortly after the SRB process began, the DEQ evaluated the site and confirmed that wetlands were present and that a wetland permit would be required. The DEQ then did what it could to review the wetland permit within the SRB's schedule for making a recommendation on the hazardous waste management construction permit. Members of the SRB requested the DEQ's determination on the wetland permit as soon as possible, and the DEQ wanted to provide the SRB with as much information as it could in this regard before the SRB made its recommendation to the DEQ. The actual decision to issue the wetland permit was not made until June 2000, well after the SRB process ended.

The issuance of the wetland permit was appropriate. While the city of Romulus and Wayne County initially appealed that decision, they agreed to the dismissal of the appeal with prejudice in November 2000.



X. FAILURE MODE ASSESSMENT

1. *The potential adverse impacts on the Detroit Metropolitan Airport have not been addressed.*

The SRB did not receive any evidence that the construction or operation of the EDS facility would adversely impact Detroit Metropolitan Airport. Further, the failure mode assessment of the facility did not demonstrate any adverse impacts due to a release of hazardous waste from the facility.

2. *EDS has not obtained the required Federal Aviation Administration (FAA) permit.*

EDS is not required to obtain a permit from the FAA. EDS did obtain an Acknowledgement of Notice of Proposed Construction or Alteration from the FAA on January 5, 1996. This FAA acknowledgement is contained in Section 1.70 of the construction permit application.

XI. HUMAN HEALTH AND SAFETY

1. *The area is already bearing more than its fair share of this type of activity. Romulus is an at-risk, already overburdened community. The SRB was presented with an unbiased research paper that conclusively shows this burden, and no evidence was presented to the contrary. Therefore, the DEQ should conduct a cumulative impact analysis of the operation of the facility in the community.*

As explained in the Fact Sheet and in other responses, the testimony received during the SRB process does not demonstrate that the construction and operation of the storage and treatment facility will adversely impact the public health, safety, and welfare and the environment. The hazardous waste management construction permit does not authorize the release of contaminants to the air, soil, groundwater, or surface water. Therefore, the permitted operation of the storage and treatment facility does not add to existing environmental burdens (e.g., sites of environmental contamination) borne by the community.

2. *A baseline health inventory study and symptom survey should be conducted for the entire community.*

The DEQ does not have the authority to require a baseline health inventory study and symptom survey, or to require that one be performed. Further, it is presumed that the study and survey would be for the purpose of determining the effects of exposures to releases from EDS. As explained in the previous response, the permit for the storage and treatment facility does not authorize the release of contaminants or the exposure of anyone to any contaminants. The facility is designed to prevent releases and exposures to them.



XII. INJECTION WELLS

The DEQ received numerous comments regarding the injection wells that would be used for the disposal of hazardous wastes received at the EDS facility. Those comments are not relevant to the decision to issue or deny this hazardous waste management construction permit. This permit does not pertain to the injection wells; it pertains only to the storage and treatment operations that would occur in tanks and containers prior to injection in the deep wells. (The wells are exempt from the permitting requirements under Part 111 of Act 451.) The deep wells were already permitted separately under other state and federal programs, and comments regarding the wells were addressed at the time those permits were issued.

Much of the public concern appears to be based on problems (e.g., groundwater contamination) that were encountered at other facilities that have had injection wells. The DEQ offers the following information about two of them, the Gibraltar Chemical Resources facility in Winona, Texas, and the Chemical Waste Management facility in Vickery, Ohio, to clarify what the problems were and to distinguish those operations from the proposed EDS facility.

The Winona facility began operations in 1981, before the federal hazardous waste management regulations were promulgated, and the Winona facility would not meet Michigan's hazardous waste management design standards today. In addition, the Winona facility conducted operations (e.g., fuel blending) different than those proposed for the EDS facility. There is no evidence that contamination of the groundwater occurring at the Winona facility was a result of injected waste migrating from the subsurface. The groundwater contamination was due to improper surface operations; not injection wells. Other problems at the facility (air emissions, spills, etc.) were due to poor design and management practices. The Winona plant is now inactive and is a federal Superfund cleanup site. Permits for the two disposal wells at the site have been renewed for ten years to allow them to be used for injection of purge water from remediation operations.

The Vickery facility began operation in the late 1950's as a waste disposal facility. Waste was stored in in-ground pits until about 1976 when the first injection well was permitted. Three additional wells were in operation by the early 1980s. The injected wastes included liquid from the pits and acid and pickle liquor from plating operations. The acids caused corrosion of the steel injection tubing and well casing. This allowed movement of waste into a brine-bearing formation immediately above the injection zone. The wells were extensively repaired in the mid-1980s. The Ohio EPA has no evidence that waste is moving upward from the Mt. Simon Sandstone. Contamination of near-surface aquifers is due to seepage from the old in-ground waste pits.



The requirements for design, construction, and monitoring of the proposed EDS wells would preclude leakage caused by casing and tubing corrosion. The requirements for the design, construction, operation and monitoring of the storage and treatment facility were developed to prevent the other types of problems associated with the Winona and Vickery facilities.

XIII. LOCATION STANDARDS

1. *Why can't the facility be located in a more remote area?*

Commercial hazardous waste management facilities are typically located near population centers where the waste is generated and near major transportation routes. While a more remote area may be a more suitable location from certain perspectives, it is not the DEQ's role to select the site. The DEQ's role is to ensure that, wherever a facility is proposed, it meets the requirements under the law.

XIV. MITIGATION

1. *The Environmental Concerns Association (ECA), the group that negotiated the Community Agreement with EDS, does not represent the community and is not recognized by them. The ECA, whether intentionally or unintentionally, discriminates against potentially impacted individuals by not including (or offering to include) them as members of the group. The DEQ, by adopting this agreement, is perpetuating this discriminatory activity.*

All residents within the one and one-half mile radius of the facility (the "eligibility area") can take full advantage of the benefits and protections afforded under the Community Agreement negotiated between the ECA and EDS. Both EDS and the ECA provided letters assuring that they intended that any resident who is located within the eligibility area is automatically a member of the ECA and therefore is afforded the same benefits and protections described in the Community Agreement for all ECA members. Further, many of the provisions of the Community Agreement (training for local emergency responders, environmental education program, etc.) will benefit persons outside of the eligibility area.

2. *The DEQ apparently does not have a list of members in the ECA. How will these people be notified of their rights under the Community Agreement and permit?*

The DEQ is not accepting responsibility to notify the parties to the agreement of their rights and responsibilities; that is a function of their representatives. As explained in the previous response, the list of members in the ECA includes all persons residing within a one and one-half mile radius of the facility, plus others. It is not practical for the DEQ to identify and notify each



member of the ECA about the Community Agreement and permit, and it is not necessary. The ECA will keep its members informed. By attaching the Community Agreement to the permit, the DEQ is accepting responsibility to hold EDS liable under Part 111 of Act 451 for its commitments to the community. EDS will be subject to enforcement action if it fails to comply with the provisions of the Community Agreement. The DEQ expects to be notified by the ECA if EDS fails to fulfill its obligations under the agreement.

3. *The terms of the Community Agreement between EDS and the ECA should be applied to all residents within a specified radius of two miles.*

The ECA and EDS negotiated an “eligibility area” of one and one-half mile radius from the facility. The DEQ was not a party to those negotiations and does not have a basis to impose a different area.

4. *The permit should require all of the following to mitigate the concerns of the community:*
 - a. *EDS must conduct point source monitoring and perimeter air monitoring that automatically trigger sirens within a six-mile radius of the facility.*

EDS is required under Condition III.H.1 of the permit to install and maintain an alarm system that automatically notifies the City of Romulus in the event of an emergency that requires implementation of the contingency plan. There is no basis for the DEQ to require alarming residents up to six miles away from the facility. The facility failure mode assessment has shown that emergencies at the facility will not require mass evacuations or result in toxic releases into the community.

- b. *EDS must join a community advisory committee chosen and conducted by grassroots environmental organizations that have taken an adverse position to the siting of the facility.*

The Community Agreement in Attachment 13 to the permit provides for a community relations committee with representatives from the ECA.

- c. *EDS (or the DEQ) must establish a 24-hour, toll-free hotline for reporting odors or emergencies.*

The DEQ 24-hour pollution emergency hotline is 1-800-292-4706.

- d. *EDS must establish a full-time, onsite fire brigade and train local fire departments with hazardous material training and equipment.*

EDS is required under Condition III.H.1 of the permit to make



arrangements with local emergency response contractors as needed to ensure an adequate response to emergencies at the facility. Onsite EDS personnel, the local fire department, and emergency response contractors are capable of responding adequately to emergencies at the facility. In addition, EDS is required under the Community Agreement to offer hazardous materials emergency training to local police and fire departments.

- e. *EDS must require all of its employees' uniforms and shoes to remain onsite, and EDS must provide cleaning and laundering services and showers for its employees.*

EDS is subject to occupational safety and health regulations that may require decontamination of uniforms, shoes, and other articles for certain workers, and showering facilities are provided at the facility.

- f. *EDS must guarantee that property values within a two-mile radius will be maintained at today's market value.*

The Community Agreement in Attachment 13 to the permit provides property value loss protections for residents within a one and one-half mile radius. That area was negotiated between EDS and the ECA, and the DEQ does not have a basis to unilaterally impose a different area.

- g. *EDS must provide contingency plans for adjacent communities and schools, workplaces, churches, homes, etc.*

The contingency plan in Attachment 5 to the permit addresses the emergency procedures necessary to protect EDS personnel, emergency responders, and the public. Separate contingency plans for adjacent communities, homes, workplaces, churches, etc. are not necessary.

- h. *EDS must establish an evacuation fund to provide for hotels and restaurants.*

As explained in other responses, it is highly unlikely that any accident at the EDS facility would present a need to evacuate anyone in the community. However, under the Community Agreement in Attachment 13 to the permit, EDS has committed to bear the moving expense and temporary relocation housing expenses for persons required by the Wayne County Health Department to evacuate their homes due to an event at the EDS facility.

- i. *The DEQ must monitor all water wells within a six-mile radius on a monthly basis for all chemicals managed at EDS.*



The environmental monitoring programs required under Part VI of the permit will detect a release from the storage and treatment facility before it migrates offsite.

- j. *EDS must provide financially for the emergency and chronic health care of the area residents affected by operations of the facility.*

The DEQ does not have the authority to impose this requirement on EDS. Persons who feel that they have suffered bodily injury due to the operations of the facility can pursue compensation through available legal means.

- k. *EDS must supply area residents with Scott air packs that are adequate to protect them from air emissions.*

The storage and treatment facility permit does not authorize air emissions, and, given the types of wastes that would be managed, there should not be any dangerous air emissions.

- l. *The DEQ must provide portable suma canisters for area residents who request them due to frequent odor nuisance.*

The storage and treatment facility permit does not authorize EDS to cause an odor nuisance in the community, and the emission controls at the facility should prevent an odor nuisance. Persons who feel that the facility is creating an odor nuisance can work with the Wayne County Air Quality Management Division to resolve their complaint.

- m. *EDS must supply reverse air filtration systems on request for all schools, homes, churches, and businesses within a five-mile radius of the facility.*

The storage and treatment facility is provided with air emission controls. All waste-handling activities are conducted inside the building where air emission controls are present. There is no basis to require additional controls or filters in buildings throughout the community.

- n. *EDS must conduct air monitoring for dioxin.*

The facility is not authorized to manage dioxin wastes.

- o. *EDS must pay for an environmental impact study conducted by a professional hired by the City of Romulus or RECAP.*

Additional studies are not necessary. The application contains an environmental assessment, and the SRB process generated additional



information regarding the potential impact of the facility on the environment.

- p. *EDS must put perimeter monitors along I-94 to protect motorists.*

The construction and operation of the facility will not threaten or impact motorists on I-94. In the event of an accidental release or emergency at the facility which requires implementation of the contingency plan, the health and safety of all potential offsite receptors, including motorists on I-94, will be addressed.

- q. *All permit and license fees, and all fines and penalties paid by EDS to the DEQ must be matched to RECAP to fund environmental defense for the community.*

The DEQ does not have the authority to require EDS to fund RECAP's activities.

As a general response to all of these demands, the DEQ is not in a position to unilaterally impose community demands on EDS. As explained above, many of these comments were already addressed by conditions in the permit. All of them should have been addressed through a negotiations process with EDS. For over four years, the DEQ urged the community to negotiate its demands with EDS. The only group that took that advice was the ECA.

XV. POLLUTION PREVENTION

1. *Approval of the proposal is inconsistent with the waste minimization provisions of Sections 14302 and 14303 of Act 451.*

The emphasis of Sections 14302 and 14303 of Act 451 is on in-plant pollution prevention. Permitting a facility to manage the wastewaters that are still generated by industry is not inconsistent with these sections. The proposed EDS facility does incorporate advanced sludge drying methods to reduce the volume of sludge generated from the treatment of the wastewaters, consistent with the pollution prevention goals.

2. *Approval of the proposal will provide generators in Michigan and the Region a convenient excuse for avoiding waste minimization and pollution prevention.*

The quantity of hazardous waste generated and managed in Michigan has steadily declined, regardless of available treatment and disposal capacity in the state and region. The additional capacity offered by EDS is not expected to reverse that trend. Many factors, including the pursuit of greater



efficiencies in manufacturing processes, the administrative and capital costs of managing hazardous wastes onsite, and the long-term liabilities associated with hazardous wastes, are influencing generators much more than the amount of commercially-available treatment and disposal capacity.

XVI. PREPAREDNESS AND PREVENTION

1. *The DEQ should ensure that the looped water supply meets the capacity requirements of at least 3,000 gpm at 20 psi.*

Under Conditions I.F.3 and III.H.4 of the permit, EDS is required to provide a looped water supply at adequate volume and pressure, and the specifications were added to Condition I.F.3 of the permit.

2. *Copies of the easements for the looped water supply should be required prior to issuance of the permit.*

The DEQ has verified that EDS has obtained the necessary easements to install the looped water supply to the site.

3. *A recent fire in which the house was a total loss demonstrates that the Romulus fire department is not capable of responding to emergencies at EDS.*

The DEQ does not expect the Romulus Fire Department to be solely responsible for addressing all emergencies at the EDS facility. EDS is primarily responsible for ensuring that adequate resources are available to respond to potential emergencies at the facility. EDS will satisfy this requirement by maintaining its own portable fire extinguishing and spill response equipment and the personnel capable of using it, and by making arrangements with local emergency response contractors. In the event of an emergency that requires offsite assistance, we expect the city of Romulus to complement the resources that will be provided by EDS and its contractors and regional emergency response agencies.

In addition, as explained in the Fact Sheet, given the design and operating requirements for the facility, the risk of a release or other emergency is minimal. From a fire safety perspective, the facility is designed to be fire resistant and it will have automatic fire suppression systems.

4. *EDS should be required to enter into contractual agreements with emergency response contractors to ensure adequate coverage and that EDS will be responsible for the response costs.*

EDS is required under Condition III.H.1 to make arrangements with emergency response teams.



5. *What assurances if any does the DEQ have in place for evacuating I-94 if necessary?*

The likelihood of the need to “evacuate” I-94 is remote. If a release or other emergency situation at the EDS facility threatened people or property offsite, then the police agencies who have jurisdiction over the roads will be responsible for closing down the affected sections of those roads.

6. *An emergency access road along or across the railroad is not appropriate because its use could be blocked by a train, and for obvious safety reasons.*

The chance that an alternate emergency access/egress road will be needed is remote. The chance that its use will be blocked for the duration of an emergency situation that requires its use is even more remote.

7. *EDS should be required to obtain local permits and approvals for the emergency access road.*

The permit does not exempt EDS from the need to apply for local permits and approvals for the alternate emergency access/egress road. As explained in responses to Zoning and Local Ordinances comments, the city of Romulus can pursue enforcement of any of its local ordinances, permits, or other requirements. Given the nature of the access road, and the fact that the city of Romulus is on record as having determined that it is necessary, we do not expect the city of Romulus to oppose it. We do expect EDS to comply with local technical requirements for the road, unless those requirements would prohibit the construction or operation of the facility.

XVII. PROPERTY VALUES

1. *The DEQ ignored the extensive written and oral testimony regarding the adverse impact of the facility on property values.*

The DEQ does not dispute the potential for the facility to adversely impact property values in the community, but it is not the DEQ’s responsibility to show whether the facility could adversely impact property values; it is the SRB’s responsibility. Unfortunately, the SRB chose to not hear the detailed testimony that was offered on the issue, and chose to not deliberate on it. The record contains only very limited oral and written testimony on the subject. The oral testimony is about a telephone survey of assessing authorities for “similar” facilities in other states. That survey apparently revealed that some of these facilities, or events that occurred at them, were assumed to have caused a reduction in residential property values or assessments. The written testimony includes articles on property value or assessment impacts in communities that host various types of facilities (planned low-level mixed waste facilities, old landfills, etc.). The testimony did not compare the specific EDS proposal (enclosed facility with tanks and



containers, fully contained run-off, environmental monitoring, etc.) to the other facilities mentioned, it did not explain why studies of other types of facilities in other states should be applicable to the EDS proposal, and it did not look at the real or perceived aspects of these other facilities (leaking lagoons, historical contamination, types of wastes managed, etc.) that may have caused the property value or assessment reduction.

Notwithstanding the lack of a clear demonstration of how property values might be impacted, the DEQ is requiring EDS to honor its commitment to compensate all residents within a one and one-half mile radius of the facility for property value losses attributable to the facility, as described in the Community Agreement, Attachment 13 to the permit.

XVIII. SOCIAL AND ECONOMIC IMPACTS

1. *Romulus has the elements necessary to be a major economic hub in the future. Given the inevitable nuisances, health risks, and stigma associated with hazardous waste facilities, the EDS facility will limit the community's economic future.*

The DEQ and SRB were not presented with any credible evidence that the storage and treatment facility will limit the community's economic future. The characterization of the facility as a nuisance and health risk to the community is not supported by any evidence and only serves to perpetuate false public perceptions. Those false perceptions are a greater threat to the community's economic future.

2. *The facility should not be located in a major transportation center for southeast Michigan. The facility would be next to Detroit Metropolitan Airport and I-94. Accidents at the facility would disrupt traffic at the airport and on I-94, causing a dramatic decline in transportation service and economic loss.*

As explained in previous responses regarding the Failure Mode Assessment and Preparedness and Prevention, the likelihood of a major release or accident at the EDS facility is remote, and the potential for it to impact transportation in the area is even more remote. The SRB was not presented with any evidence that a spill, fire, or other emergency at the EDS facility would disrupt any offsite activity. The SRB was provided with detailed assessments and expert testimony that such events would not have significant offsite impacts. In the unlikely event that an accident or release at the facility presents a threat to persons or property offsite, any resulting disruption of traffic at the airport or on the highway would be temporary. The DEQ and SRB were not provided with any testimony or evidence regarding the potential economic impacts of a temporary disruption in transportation services in the area.

XIX. SRB REVIEW



1. *Any complaints that the DEQ has about the SRB are only a reflection of themselves because the DEQ was responsible to assist the SRB. The DEQ did not give the SRB adequate direction and advice. The SRB did a good job. During the process, the DEQ criticized the SRB for proceeding too slowly, so the criticism now that the process was conducted too hastily is unwarranted.*

The DEQ provided the SRB with training before its first meeting, and offered advice throughout its process. The SRB chose not to follow much of that advice and the DEQ could not force the SRB to do so. The DEQ's advice is well documented in the administrative record.

The SRB process is designed to provide a meaningful and objective examination of the evidence regarding a specific facility's potential impact on the local community. That is why the SRB is comprised of members who represent certain interests and specialties, and why they are directed to conduct hearings to receive evidence and to deliberate on the issues. Deliberation involves careful discussion and consideration of alternatives before reaching a decision, and it is only by deliberating on the issues that the SRB can support its recommendations.

The DEQ cautioned the SRB early in its process that it was spending too much time on too few issues, hearing only one-sided testimony and not deliberating on the issues. This ultimately resulted in the SRB making a recommendation that was not supported by the record developed during its process.

2. *The DEQ's contention that the SRB failed in its duty to deliberate on certain issues is wrong and capricious. Webster's Dictionary defines deliberate as "to think about or to discuss issues and decisions carefully..." The record clearly indicates that the SRB did deliberate.*

The SRB is required to deliberate on the issues. When used in the context of a group of individuals who are charged with making a decision, the term "deliberate" raises the expectation that they will openly discuss what they are deciding. The DEQ contends that the SRB failed to deliberate on certain issues because it did not discuss them. Without a record of discussing some of the issues, the SRB cannot support its conclusions regarding them, especially when the oral and written testimony provided to the SRB does not support those conclusions. For example, one of the reasons that the SRB recommended denial was the adverse impact that the facility would have on property values. As explained in a previous response, the SRB did not discuss this issue, and chose not to hear the detailed testimony that was offered on it. The DEQ could not find any oral testimony or written testimony that showed how the facility would adversely impact property values.



3. *The DEQ's criticism of the objectivity of individual SRB members is not warranted; they faithfully fulfilled their duty.*

The criticism of the objectivity of individual SRB members comes not only from the DEQ, but also from other SRB members. This criticism is warranted, especially given statements by certain SRB members at their first meeting, before they heard or considered any testimony, that they were opposed to the project and would do everything they could to defeat it. By their own admission, these members were not objective, and that lack of objectivity set the tone for the entire process.

4. *The DEQ should reconvene the SRB to properly address the issues.*

Under Section 11120(16), the DEQ may reconvene the SRB to consider new issues raised during the public comment period that began on December 15, 2000 and ended on February 1, 2001. That public comment period did not generate any new issues, and the DEQ will not reconvene the SRB to reconsider issues that were already raised during its process.

5. *The SRB's recommendation should be followed unless there is a real absence of evidence in the record that would support its recommendation.*

As explained in the Fact Sheet and in numerous responses in this document, many of the SRB's reasons are simply not supported by any evidence in the record. The record does support some of the issues raised in the SRB's reasons for denial, and the DEQ is relying on that record as a basis to put special conditions in the permit which require EDS to address them (e.g., provide alternate emergency access/egress road).

6. *Identify all documents upon which the DEQ relied in determining that the SRB's findings were in error.*

The DEQ relied upon the administrative record in determining that the SRB failed to provide a defensible recommendation. That record began when EDS submitted its first application in January 1997 and ended when the SRB process concluded.

XX. STORMWATER RUNOFF

1. *The stormwater detention pond should be covered to control odors and to protect birds and other wildlife.*

The stormwater detention basin will not contain waste; it will only contain rainfall runoff from the site. This rainwater does not pose an odor problem or threaten birds and other wildlife.



2. *The DEQ should justify its response to the SRB's concern about uncontrolled spills from tanker trucks staged on areas without adequate stormwater discharge controls. The DEQ response was only that trucks cannot be staged on Citrin Drive.*

The DEQ provides an adequate explanation in the Fact Sheet. Runoff from the entire EDS site is controlled. Citrin Drive is not a part of the facility, and therefore does not have controls to prevent spills from reaching sewers, surface waters, or soils. Under Condition III.U.4 of the permit, EDS must prevent trucks from parking or staging on Citrin Drive.

3. *EDS should be required to protect city sewers and drains from contaminated run-off from the facility.*

City sewers and drains are protected from contaminated runoff from the facility. The entire site is contained such that all leaks or spills, and even precipitation runoff cannot escape into drains, sewers, or surface waters or onto adjacent lands.

XXI. TRAFFIC

1. *The requirement in the permit that EDS endeavor to reconstruct the intersection of Citrin Drive and Inkster Road is not sufficient, and does not address the misalignment of Citrin Drive and Trolley Drive. EDS should be required to make the improvements.*

Condition I.F.5 (formerly Condition III.U.3) in the permit has been revised to require EDS to design and construct the improvements if approved by the Wayne County Road Commission (WCRC).

The misalignment of Citrin Drive and Trolley Industrial Drive apparently raises concern that trucks simultaneously turning left onto Inkster Road from Citrin Drive and Trolley Industrial Drive would collide. Trucks on Trolley Industrial Drive are already prohibited from turning left (south) onto Inkster Road, and trucks exiting the EDS facility would be prohibited from turning left (north) onto Inkster Road. (The required truck route is south to Wick Road.) The DEQ does not find a basis to require the realignment of the intersection.

2. *The permit limit of 26 trucks a day should be reduced because EDS agreed to 20 to 25 per day during the SRB process.*
EDS committed, in a February 29, 2000 letter to the SRB, to limit the number of tanker trucks to 26 per day.
3. *The limits in the permit should apply to all trucks; not just tanker trucks.*

The limit in Condition III.U.1 of the permit applies only to tanker trucks



because that is the commitment that EDS made to the SRB. The evidence and testimony presented to the SRB does not support additional limitations.

4. *The provision in the permit that allows the Chief of the Waste Management Division to increase the number of trucks allowed should be changed to require that an increase can only be authorized if it is supported by the analysis and recommendation of an independent traffic engineer, in consultation with local authorities who have jurisdiction over the roads involved.*

Condition III.U.1 of the permit has been revised to clarify that a change in the daily limit on trucks is a modification to the permit that requires public participation. The DEQ intends to consult with local authorities before making a final decision on any modification to the truck limit.

5. *How will the trucks get to EDS if the specified truck route is blocked by construction or an accident, or if it is simply too congested?*

The permit authorizes only one truck route. Trucks that find the route to be blocked or too congested do not have an alternative route, and will have to take their shipment to an alternate facility designated on the manifest.

6. *The SRB did not indicate that the potential for accidents involving tankers was “unacceptably higher” than the potential for accidents involving other vehicles; it was concerned that the accident rate in the area was simply far too high and that the consequences of the tanker accidents that could be expected, given this overall accident rate, were unacceptable.*

The testimony and evidence provided to the SRB does not show that tanker trucks are likely to be involved in accidents, or that any accidents involving tanker trucks would have extreme, unacceptable consequences.

The 1999 Wade-Trim Traffic Impact Study report was presented to the SRB to show that the EDS facility would have an unacceptable impact on traffic in the area. The report includes data to show that the proposed truck route is congested and that that accident rates are higher than what is commonly deemed acceptable. The problem with that report is that it fails to show how the accident data translates into the probability of accidents involving hazardous waste shipments destined for EDS, and that, if a hazardous waste shipment is involved, the risk to the public and environment is unacceptably high.

According to the Wade-Trim report, hazardous material transportation industry data suggests that a “release incident” involving a shipment destined for EDS will occur approximately once every 17 years. That prediction is dismissed with a statement that the localized crash potential is higher, although a higher estimate is not provided, based on data that presumably is



derived from all vehicle accidents in the area. Note, too, that the accident predictions in the Wade-Trim report are based on 42 tankers – 16 more than allowed in the permit – and apparently include passenger vehicles that would travel to and from the EDS facility each day.

Were the accidents mostly “fender benders” or did serious property damage and personal injury result? At what time of day did most of the accidents occur? Would hazardous waste haulers destined for EDS be making the same turns as those vehicles involved in the accidents? What types of vehicles were involved? At what speeds did the accidents occur? If tanker trucks were involved, did they spill any of their contents? The Wade-Trim report and testimony provided to the SRB do not answer these questions. Without the answers to these questions, the SRB cannot support its contention that “the risk of accidents ... involving hazardous waste transportation vehicles is unacceptably high...”

XXII. WASTE ANALYSIS

1. *EDS should be held to managing noncorrosive wastewaters because EDS testified to the SRB that the wastes were only as harmful as vinegar.*

The testimony during the SRB process that compared the wastes to vinegar was not a commitment that all wastes will be only as harmful as vinegar. Vinegar is not a hazardous waste. The SRB was also informed on many occasions that EDS would accept hazardous wastes that may be corrosive and that may contain toxic chemicals. The facility will not be limited to noncorrosive wastewaters.

2. *Since EDS described its wastes as approximately 90 percent water, this limit should be in the permit. EDS agreed to this limit during the SRB process.*

It is not necessary to limit the wastes based on the percentage of water. The chemical (e.g., no regulated polychlorinated biphenyls) and characteristic (no reactives, no flammables, etc.) limits are sufficient to ensure that the facility manages only those wastes for which it was designed.

3. *Since the DEQ claims that the SRB misunderstood the nature of the wastes that would be managed at the facility, the DEQ should guarantee that any changes in the types of wastes being handled at the facility will be considered a major permit modification, subject to public review and comment.*

Under R 299.9519, additions to the list of acceptable hazardous wastes require a major modification of the operating license. All major modifications to an operating license must be accompanied by the public participation procedures specified in R 299.9511.



4. *EDS has claimed that it will not accept poisonous wastes at the facility. What is the DEQ definition of poison as it relates to the wastes that EDS will handle?*

The term “poison” refers to compounds that are labeled “poison” under the federal Food, Drug, and Cosmetics Act. Under Conditions IV.B.3 and V.B.2 of the permit, EDS may not accept these labeled poisons or wastewaters that contain them.

5. *The procedure for composite sampling of containers described on page 39 of the Waste Analysis Plan is inadequate. Each container received at the facility should be sampled and analyzed separately.*

The procedure for sampling of containers is adequate. Sampling and analyzing each container separately is unnecessary. Generators of the individual waste streams are required to characterize their wastes before they are shipped to EDS. The random sampling performed by EDS on shipments that arrive at the facility is based on appropriate statistical methods to ensure representative samples and to verify that the characterizations from the generators are accurate.

XXIII. ZONING AND LOCAL ORDINANCES

1. *The SRB did not need to deliberate on local ordinances any further to justify applying all of them to EDS.*

Where the SRB process provided sufficient evidence to integrate a local ordinance, permit, or requirement into the facility, the DEQ added special conditions to the permit (e.g., Condition I.C). The SRB deliberations were not sufficient, however, to justify applying every local ordinance, permit, or requirement to EDS. The SRB did not even hear testimony on every possible ordinance, permit, or requirement. Further, the SRB process failed to justify applying certain local requirements that clearly would prohibit construction of the facility (e.g., minimum site size). Section 11121 of Act 451 preempts a local ordinance, permit, or other requirement that would prohibit construction of the facility.

2. *The provision in Condition I.C of the permit that only specifies compliance with local ordinance requirements that would not result in modifications of the approved plans and specifications to the facility should be deleted because it is broader in scope than the preemption provisions in the law.*

This provision does not go beyond the scope of the preemption provision under Section 11121 of Act 451. One purpose of the SRB process was to determine which local ordinance requirements were necessary to protect the public health, safety, and welfare and the environment, and to then require, through the SRB proceedings, conforming modifications to the facility. All of



the issues raised by the city of Romulus in its site plan review that were shown to be necessary to protect the public health, safety, and welfare and the environment have already been addressed by requiring EDS under Condition I.C of the permit to modify engineering plans accordingly. The DEQ will work with the city of Romulus to ensure that those changes are done appropriately. Given the considerable opportunity that the city of Romulus has already had to demonstrate the need to modify the engineering plans and specifications, the DEQ does not expect the city of Romulus to propose additional modifications after the permit is issued. Any additional changes that are shown to not conflict with the technical requirements under Part 111 of Act 451 and to not prohibit the construction or operation of the facility would then require modification of the permit.

3. *Condition I.C.1 should also require compliance with the procedural requirements under local ordinances.*

The DEQ will not require EDS to comply with any procedural requirements under local ordinances, nor will it authorize EDS to ignore or violate any of those requirements. The purpose of integrating local requirements into the permit is to enforce those local requirements that were demonstrated through the SRB process to be necessary to ensure protection of the public health, safety, and welfare and the environment. The city of Romulus did not make that demonstration for any of its local procedural requirements during the SRB process.

4. *A recent new ordinance in Wayne County requires facilities to provide for stormwater detention to accommodate a 100-year storm, and the EDS facility does not satisfy this requirement.*

The stormwater detention basin can accommodate the runoff from a 100-year rainfall event.

5. *By not integrating all local ordinances into the permit, the DEQ has delegated itself the right to go into a community and tell local officials and citizens which ordinances will stand.*

The DEQ is authorized under Section 11120(13) to integrate provisions of local ordinances, permits, and requirements into the permit to the fullest extent practicable, and that is what the DEQ has done. The DEQ has not selected which local ordinances state law preempts. Instead, the DEQ has selected which local ordinances will affect compliance under the permit. For example, EDS will not be in violation of its permit for failure to satisfy the local ordinance requirement for a minimum site size of 30 acres. The EDS site is only approximately 15 acres, and the city of Romulus failed to provide any reasonable justification for requiring a minimum of 30 acres.



6. *The DEQ misread the law regarding compliance with local ordinances. The SRB is only required to consider the relationship between the facility and local ordinances; it is not required to justify the application of these ordinances to the facility. Neither the SRB nor the DEQ has the power to authorize noncompliance with local laws that are not in conflict with state or federal requirements.*

The SRB and DEQ are specifically required under Section 11120(13) to integrate provisions of local ordinances, permits, and requirements into the permit to the fullest extent practicable. This requires much more than simply a consideration of the relationship between the facility and local ordinances; it requires an evaluation of whether the local ordinances, permits, or other requirements are as stringent as the requirements under Part 111 of Act 451, whether they conflict with the requirements under Part 111 of Act 451, and whether they would prohibit the construction of the facility. The DEQ integrated local requirements into the permit to the fullest extent practicable. Further, the DEQ intentionally did not require compliance with certain local requirements that would prohibit construction of the facility (e.g., minimum site size requirement of 30 acres). However, the draft permit does not authorize noncompliance with any local ordinance, permit, or requirement. The city of Romulus may pursue enforcement of any of its ordinances, permits, or requirements, regardless of whether they are integrated into the permit. If the city of Romulus elects to enforce one that is not specifically integrated into the permit, then it will have the burden to justify that the application of the specific local ordinance, permit, or other requirement does not conflict with the technical requirements under Part 111 of Act 451 and that it would not prohibit the construction of the facility, in contravention of Section 11121.



Facility-Specific Conditions and Permit Changes

In addition to the standard or “boilerplate” conditions typical of all construction permits and operating licenses, the draft construction permit contains several facility-specific conditions. Many of these conditions are intended to mitigate the adverse effects identified by the SRB in its reasons for denial of the construction permit. The following is a listing of all facility-specific conditions in the permit and any conditions from the draft permit that were substantially revised based on public comment. The conditions are listed in the order in which they first appear in the construction permit. Descriptions of changes from the draft permit are highlighted in *Italics*.

- **Effect of Permit and Compliance with Local Ordinances.** *Draft permit Conditions I.B and I.C.6 (new Condition I.C.5) were revised to also incorporate the provisions of Sections 11125 and 11134 of Act 451. These additional provisions pertain to preemption of local ordinances that would prohibit operation of the facility and transportation of wastes to and from the facility. The second from the last sentence in both draft permit Conditions I.B and II.B, and the entire draft permit Condition I.C.7, which described legal arguments that the permittee may make, were deleted because the permit is not the mechanism to define what the permittee will or will not argue in the future. In addition, the draft permit cover page and Conditions I.B and II.B were revised to clarify that issuance of the permit does not relieve the permittee from complying with statutory or regulatory requirements which are enacted or promulgated after the permit is issued.*
- **Initial Operating License.** *Draft permit Conditions I.B and I.H were revised to clarify that issuance of the construction permit does not assure the issuance of the initial operating license.*
- **Local Ordinances and Requirements.** Condition I.C integrates appropriate local ordinance codes and requirements into the construction permit. This addresses many of the issues identified by the city of Romulus site plan review, including locations of fire hydrants, Citrin Drive improvements, onsite fire lanes, onsite truck parking, and curb radii on the entrance to the site. *Draft permit Condition I.C.1 was revised to replace the word “requirements” with the word “code” to clarify that the permit integrates only the technical aspects of those local building and construction ordinances; not the local procedural, permitting, or approval aspects.*
- **Building and Construction Codes.** *The draft permit Condition I.C.1 was revised to clarify that EDS must comply with the technical codes for the building and construction under local ordinances.*
- **Truck Staging.** Conditions I.C.4(d), III.U.4 and III.U.5 limit the number of trucks that may be staged onsite and prohibit the staging of trucks on Citrin



Drive. This addresses the concerns over the site's compliance with local ordinance parking limitations and the threat of a release on Citrin Drive, an offsite area that does not have spill controls and collection systems.

- **Road Improvements.** Condition I.F.5 requires EDS to pursue the reconstruction of the intersection of Citrin Drive and Inkster Road to address recommendations for a deceleration and passing lane. *Condition III.U.3 of the draft permit was moved to Condition I.F.5 and revised to clarify that EDS must do the engineering work, apply for permission to reconstruct the intersection, and reconstruct the intersection if permission is granted by the Wayne County Road Commission.*
- **Construction Certification.** Condition I.G.6(c) was added to clarify that the permittee must also certify that construction activity required offsite (e.g., looped water supply) was completed as required under the permit.
- **Water Supply.** Condition III.H.4 and Condition I.F.3 require EDS to provide a looped water supply to the site to ensure water at adequate volume and pressure. *The draft permit Condition I.C.4 regarding the looped water supply was moved to Condition I.F.3 because the looped water supply is not a specific requirement under local ordinances. In addition, the specifications for the water supply were added.*
- **Site Access.** Condition III.H.5 and Condition I.F.4 require EDS to provide an alternate emergency access/egress road to the site. This addresses the concern that Citrin Drive would have been the only access road to the site, and that access from the north, south, and west is inhibited by the highway and other land uses. *The draft permit Condition I.C.5(f) regarding the alternate emergency access/egress road was moved to Condition I.F.4 and revised because the alternate emergency access/egress road is not a specific requirement under local ordinances.*
- **Reporting of Noncompliance.** *Draft permit Condition III.L.6 was revised to require that the follow-up reports from EDS regarding noncompliance that endangered human health or the environment also be sent to the city of Romulus, city of Taylor, and Wayne County.*
- **Truck Traffic.** Condition III.U.1 establishes daily limits on the number of tanker trucks that may deliver hazardous wastes to the EDS facility. *The draft permit Condition III.U.1 was revised to clarify that an increase in the maximum number of tanker trucks requires a major amendment to an operating license for the facility. In addition, the types of information that would be considered before an increase was approved were deleted to ensure that the condition did not inhibit the DEQ from considering all relevant information.*



- **Truck Route.** Condition III.U.2 establishes the route that vehicles delivering hazardous waste to the facility may travel. The route from Interstate-94 includes Middlebelt Road, Wick Road, and Inkster Road.
- **Mitigation.** Condition III.V incorporates the Community Agreement between EDS and the Environmental Concerns Association. The agreement addresses many issues, including hours of operation, employment goals for local residents, hazardous materials training for local police and fire agencies, compensation for drops in property values, etc.